



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 4202-00

27 July 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Marine Corps Reserve filed enclosure (1) with this Board requesting that the record be corrected to show that he transferred to the Retired Reserve vice being discharged on 19 January 1996.

2. The Board, consisting of Mr. Rothlein, Mr. Frankfurt and Ms. McCormick, reviewed Petitioner's allegations of error and injustice on 25 July 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in a timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Marine Corps Reserve for two years on 20 January 1992. He was promoted to GYSGT (E-7) on 1 January 1994. He subsequently extended his enlistment on two occasions totaling 24 months. On 19 April 1995 he was issued a Notification of Eligibility for Retired Pay at Age 60. On 19 January 1996 he was issued an honorable discharge at the expiration of his enlistment as extended.

d. The Board did not request an advisory opinion in this case. However, the Board is aware that Headquarters Marine Corps

has routinely recommended corrective actions in similar cases when an individual was in good standing in the Marine Corps Reserve and there is no explanation in the record why they were discharged and not retired.

e. The Board is aware that the Uniform Retirement Date Act, 5. U.S.C. 8301, requires that the effective date of any retirement be the first day of the month.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board notes that he was in good standing in the Marine Corps Reserve and would have been retired if he had requested it. Therefore, the Board concludes that he should be transferred to the Retired Reserve in the grade of GYSGT. Given the requirements of the Uniform Retirement Date Act, he should be transferred to the Retired Reserve on 31 December 1995.

The Board further concludes that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand Petitioner's status in the Retired Reserve.

RECOMMENDATION:

a. That Petitioner's naval record be corrected to show that he transferred to the Retired Reserve on 31 December 1995 in the grade of GYSGT vice being discharged on 19 January 1996.

b. That this Report of Proceedings be filed in Petitioner's naval record.

4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the

authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.

Rahul D. Fishman

for W. DEAN PFEIFFER
Executive Director